

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 6237 of 2023

Md. Ibrahim Bhuiyan

...Petitioner

-Versus-

Alhaz Abu Taleb

... Opposite Party

Mr. Md. Saifur Rahman, Advocate

... for the petitioner

Ms. Tasmia Prodhan with Ms. Rokshana Shrin,  
Advocates

... for the opposite party

Judgment on 05.12.2024

This rule at the instance of the defendant was issued on an application under Section 115 of the Code of Civil Procedure challenging order dated 24.07.2023 passed by the Senior District Judge, Dhaka in Summary Suit Number 8 of 2022.

The plaintiff instituted the summary suit under Order XXXVII, rule 3 of the Code of Civil Procedure for realization of money against a bank cheque issued by the defendant. The summon of the suit was served upon the defendant and after expiry of the limitation, he appeared before the court and filed an application for time to file written statement. Learned Senior District Judge rejected the application by the impugned order, challenging which the

defendant moved in this court with the present revisional application and obtained the rule with an order of stay of the proceedings in the suit.

Mr. Md. Saifur Rahman, learned advocate for the defendant-petitioner submits that the court itself fixed the date for submission of written statement beyond the period of limitation. In such a position, learned Senior District Judge was wrong in rejecting the time petition filed by the defendant on the ground of limitation. In some cases, where the summon is not properly served, the court can extend the time for filing written statement. In support of his submission, Mr. Saifur Rahman refers to the case of *Emirates Bank International vs United Exports Limited and 8 others*, PLD 1993 Karachi 661.

Ms. Tasmia Prodhan, learned advocate for the plaintiff-opposite party, on the other hand, submits that the summon was duly served upon the defendant. According to Article 159 to the First Schedule of the Limitation Act, it was incumbent upon him to appear before the court and seek leave to file written statement within ten days therefrom, if he intended to contest the suit. Instead, he appeared before the court beyond the period of limitation, and filed time petition for filing written objection against the application filed by the plaintiff. There was no scope to extend the limitation. Learned District Judge rightly rejected the time petition.

I have considered the submissions of the learned advocates and gone through the record as well as the decision cited. It appears that the summon was served upon the defendant's wife at his address on 01.03.2023 and the process server submitted the service report on 05.03.2023, which was recorded by the trial Judge to have been duly served. According to Order V, rule 15 of the Code, service of summon on an adult member of one's family is treated to be good service. Article 159 to the First Schedule of the Limitation Act provides ten days time to appear before the court and to seek leave to file written statement after service of summon. It was, therefore, incumbent upon the defendant to appear before the court within ten days therefrom, which he did not. It further appears that the plaintiff filed an application for withdrawal of a complaint case filed earlier under Section 138 of the Negotiable Instrument Act, though in wrong forum. Learned District Judge, however, fixed the date on 24.07.2023 for filing written objection. It is not clear, whether the learned District Judge meant written objection against the application for withdrawal, or wrongly stated "written objection" in place of "written statement". Even if the learned District Judge meant it "written statement", the defendant could have filed application for leave to file a written statement on the fixed date i.e. on 24.07.2023, which he did not. In such a case, I do not think that the learned District Judge committed any wrong in rejecting the time petition.

In the case of Emirates Bank International as cited by the learned advocate for the petitioner, the summon was first served by publication on 03.09.1987 in Daily Morning News and thereafter, by post on 12.10.1987. The defendants appeared on 18.10.1987 and filed application for leave with another application for condonation of delay under Section 5 of the Limitation Act explaining that they did not subscribe the newspaper and did also not read the same. The Court held the summons to have been duly served on 12.10.1987 and the applications for leave were filed within time on 18.10.1987. In the cited case, the summons were issued under rule 8 of the Banking Companies (Recovery of Loan) Ordinance, 1979. The law relating to service of summon and the facts and circumstances of the cited case thus appear to be distinguishable with the present case.

It is to be kept in mind that the provision of summary suit is enacted for speedy recovery of money claimed against a negotiable instrument. This type of suit is called “open and shut” case. In view of the scheme of law, there is no scope to drag the proceedings on filing unnecessary time petition. For all the reasons stated above, I do not find any merit in the rule.

Accordingly, the rule is discharged. The order of stay passed earlier stands vacated.